

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant :	Scott C. Harris	Group Art Unit 3679
Appl. No. :	09/669,805	
Filed :	September 26, 2000	
For :	REAL TIME AUCTION WITH END GAME	
Examiner :	Ernesto Garcia	

Petition Under 37 CFR 1.181(a) (3) to invoke the Supervisory  
Authority of the Director of the USPTO  
"Petition A"

Director of the United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Your Delegees in the above-captioned case have abused their authority during the process of purportedly examining the patentability of this patent application. Your supervisory authority is requested to correct this pattern, both for the current patent application, and for any other patent applications in which this wholly improper pattern of conduct is being followed by your Delegees.

To summarize the below, your Delegees have been abusing the procedure of alleging responses to be "non-responsive", using this procedure in a way that it was never intended to be used,

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with the apparent goal (and certainly the effect) of delay of examination. Moreover, this is being done in a way that evades review of either the substance or process by appropriate Patent Office Officials.

Even if this issue has been mooted by the time of the consideration of this petition, these issues should in any case be considered, since this pattern is "capable of repetition, yet evading review", due to the one-month time periods imposed by the patent office as part of these non-responsiveness petitions.

*Statement of the facts*

No fewer than 9 times since May 19, 2005, the examiner in this case has issued notices of nonresponsiveness. In the same period, the Examiner has issued only a SINGLE action on the merits. The effect of these serial nonresponsiveness notices is that applicant has been DENIED the examination to which he is entitled, for 3 years, under the guise of non responsiveness. This pattern amounts to an abuse of discretion.

While some of the issues raised by the non-responsiveness notices have some colorable basis in fact, others have no basis in fact whatsoever. Moreover, all of these are done under a patent office procedure that, in effect, prevents their content from being reviewed.

On October 19, 2005, applicants responded to an official action. As part of responding, applicant confirmed an election

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that had been made. The restriction had not yet been made final. Accordingly, the applicant did not indicate all the claims as being withdrawn in the filed amendment.

1. In a paper mailed January 17, 2006, the patent office indicated that this amendment was nonresponsive since "the examiner withdrew these claims". See appendix 1.

Applicant resubmitted the amendment on February 17, 2006, noting the claims as "withdrawn".

2. On April 19, 2006, another notice of nonresponsiveness was issued, this time indicating that corrected drawings were required. See Appendix 2. These corrected drawings (if they really were required in the first place) could have been requested in the first nonresponsiveness notice issued some three months earlier.

However, Applicant responded and complied on May 16, 2005.

3. Amazingly, on July 27, 2006, yet another issue of nonresponsiveness was raised, see appendix 3. In this time, the patent office admitted that the drawings were received, but indicated that "changes to the drawings have not been explained".

In addition, the patent office raised yet another issue: that the amendment was not signed appropriately. The patent office took the position that an electronic signature that only

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included initials did not conform to 37 CFR 1.4. The undersigned believed and believes now that this contention is legally incorrect. After reading many times the electronic signature regulations, the undersigned has concluded that any mark the applicant decides to adopt as their own signature can in fact be used as an electronic signature. In fact, the rule calls this an "S signature", apparently condoning that the signature /S/ could be adopted. Therefore, this rejection was legally incorrect.

However, the regulations of the patent office do not explicitly allow any way of challenging the notice of non-responsiveness. A 30 day period for response to the notice is given. Applicant's options are either comply with the Examiner's contention or face abandonment of the application.

Accordingly, applicant responded on August 9, 2006 and complied with this notice.

4. On October 20, 2006, the examiner again provided yet another notice of nonresponsiveness, questioning again the drawings. See appendix 4. This was responded to on November 20, 2006.

5. On February 8, 2007, yet another notice of noncompliant amendment was provided, this time objecting to the amendments to the specification. See appendix 5. (Note that we are still trying to respond to the nonfinal action issued by the patent

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office May 19, 2005, and we are on our fifth non-responsiveness indication). Applicant responded on March 4, 2007.

On May 15, 2007, 2 years after the last action, the examiner finally issued a final official action.

Applicant responded to this official action on August 28, 2007.

6. On September 12, 2007, the Patent Office provided an advisory action (with noncompliance notice) stating nothing other than the amendment failed to include replacement drawing sheets, which was in essence a notice of non-responsiveness, since it did not reach any of the issues raised in the after-final amendment. See appendix 6. In fact, replacement drawings showing amended figures had been provided.

Applicant then submitted drawings on September 17, 2007 indicating them as replacement sheets. They were informal.

7. On September 28, 2007 another notice of noncompliant amendment was issued, this time stating that the replacement sheets "contained marking showing changes". See appendix 7.

The undersigned, realizing at this point that he could not possibly receive a fair examination, or in fact ANY examination at all, filed a notice of appeal in an attempt to get this case

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reviewed by the Board of Appeals. An appeal brief was filed on December 16, 2007.

8. On March 13, 2008 a notice of noncompliant appeal brief was issued. See appendix 8. This notice stated in item 2 that status of all claims (here, the canceled claims!) had not been addressed. In fact, these claims were indicated as canceled. Item 3 objected to applicant's statement that it was unknown whether the amendment had been entered or not entered. This was based on the applicants being unable to tell what had happened from the advisory action that simply ignored my amendment after final.

The examiner indicated that the statement should indicate whether or not the amendments were entered. How can applicant indicate something that was not communicated to Applicant? The advisory action (paper number 20070921) has a section 7 that allowed indication of whether an amendment would be, or would not be entered. Neither box was checked. How could applicant know whether the amendment had been entered?

Nonetheless, the examiner's interpretation, albeit incorrect, was provided as a reason for failing to enter this appeal brief. Again, there was a one month period given for response. Applicant had no option but to comply.

In item 4, the patent office indicated that the summary of the claimed invention was not sufficient, apparently in the

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examiner's opinion. Again this was based on the examiner's improper interpretation of what is, or is not, sufficient to meet the rules.

Item 7 stated that only claims on appeal are to be present, and that since claims 7, 23 and 24 were withdrawn, they could not be included. Again, this is incorrect, since nothing in the rules states that only the claims on appeal can be included in such an appendix. In fact, the undersigned has had briefs returned for failing to include non-appealed claims in the appendix. My appendix made it completely clear that those claims were not on appeal.

In any case, applicant complied with these requests (since there was no choice but to comply), filing a new appeal brief on April 11, 2008.

9. Now, on June 18, the patent office has again given a new notice of defective appeal brief. See appendix 9. Again, this notice is legally incorrect. It denies applicant's due process rights by raising issues that could easily have been raised in the previous, March 13, 2008 notice. It argues things that are the Examiner's opinion, not supported by the rules. It argues about grammar. It even argues about the merits to be reviewed on appeal. All is wholly improper.

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The notice starts out that "a concise explanation is to be about the claimed invention and not a discussion of what particular pages and line numbers of the specification does arrive discuss". Applicant knows of no legal support for this interpretation, and certainly nothing that would justify the delays that have been caused to applicant.

Also within this section:

The examiner requests his preferred grammar - see paragraph 4, which requests parenthesis. How could this preferred grammar make an appeal brief non-compliant?

The examiner argues, at the end of paragraph 3, an alleged inconsistency, which is one of the issues on appeal. It is quite simply an abuse of discretion to allow this substantive disagreement between examiner and applicant to become a reason for the brief being non-compliant. In fact, if this theory were adopted, the Examiner could object to any Brief that stated any issue with which the Examiner disagrees. This could not possibly be proper exercise of the non-compliant paper practice.

In item 5, the patent office objects that the drawing correction is not an appealable issue. Again, there is no proscription against putting non-appealable issues into appeal briefs. If the board of appeals believes that this is not an appealable issue, and they can properly refuse to consider the issue. It is wholly improper for the examiner to object to an appeal brief because there is a non-appealable issue included



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therein. (However, a separate petition is being concurrently filed to request consideration of this issue)

Item 6 indicates that the appellant's brief failed to provide separate subheadings for the claims. Whether correct or not, this could have been put into the notice of defective appeal brief dated March 13, 2008. Raising it only after a first notice of noncompliance is quite simply an abuse of process.

Item 9 indicates that the related proceedings appendix was not attached. Note that this appendix was in fact attached to the December 16, 2007 appeal brief. Under the rules, only those portions of the appeal brief which need to be changed need be resubmitted. Applicant did not need to resubmit the related appeals proceedings section under the appropriate rules - it had already been submitted. The examiner was legally incorrect in stating this. However, again applicant has no recourse but to provide it; even though the notice is legally incorrect.

*Points to be Reviewed*

1) The patent office's pattern of use of noncompliant document practice amount to an abuse in this case. As shown above, no fewer than 9 noncompliance notices were provided over three years of prosecution, during which only a single substantive action was issued by the USPTO.

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The applicant has no recourse but to comply with these actions, because the patent office has no procedure for timely reconsidering the substance of these noncompliance notices.

In fact, many of the points raised by the examiner under the guise of "noncompliance" are quite simply legally incorrect. There is no mechanism for review or oversight of the examiner's position. The pattern of conduct which has occurred in this case amounts to harassment. Applicant paid for and deserves an examination of this patent application. The failure to examine for the past three years under the guise of serial-nonresponsiveness should not be tolerated by the patent office.

Your delegees have abused the authority that you have delegated to them, by using the noncompliant amendment practice to delay the prosecution of this application and to harass the applicant. Use of your supervisory authority to correct this grievous wrong is requested.

It is requested that the Director direct both this examiner and the remainder of the examining corps that only one non-compliant paper indication per office action is appropriate behavior. It is requested that the Director direct this and other Examiners that more than one notice of non-compliance should be issued only in extraordinary circumstances. It is requested that the Director institute some procedure that allows timely review of notices of non-compliance upon request by an applicant, to prevent the wrong that has been perpetrated herein.

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In addition, the Director's supervisory authority is requested to direct the examiner that many of his points, (as mentioned above) are legally incorrect.

2) The patent office's use of noncompliant amendment practice to delay examination has caused irreparable harm to the undersigned. The patent examiners need to consider amendments as submitted, not find ultra-technical reasons to reject even their consideration. In fact, in this case, two different amendments after final were filed, and there was never any indication that the patent office or even ever considered the merits of either of these amendments. Rather, all the patent office has found an ultra-technical (and legally incorrect) reason to refuse to consider these amendments. This cannot possibly be considered to be within the patent office's mandate of providing "exclusive rights to inventors".

It is requested that the Director attempt to redress this wrong by 1) indicating this case to have "special" status in an attempt to redress the improper 3 year delay, and 2) direct that a 3 year term adjustment (at a minimum) be added to the term of the eventual issued patent from this application.

3) The Director should direct this examiner to forward this application (with the new appeal brief as concurrently submitted)

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to the Board of Appeals, without further notifications of non-compliance.

4) This petition should be acted on, even though by the time the petition is acted on, many of the issues noted herein may be moot. However, this issue is capable of repetition, yet evading review. I can only presume that many other applicants are being similarly harassed with improper and legally incorrect noncompliant amendment notifications, when in fact there is nothing wrong with the amendment or the amendment errors are de minimus.

Your supervisory authority to prevent Examiners from issuing actions - for which they have no accountability and for which there is in effect no process for review - is respectfully requested and is certainly necessary to maintain justice.

Applicant therefore requests relief, by way of

1) an indication to this specific examiner to cease the harassment being caused by serially indicating that amendments are non-responsive,

2) an indication to the specific examiner that many of these points are legally incorrect, and

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3) a set of guidelines very specifically indicate when it is and is not appropriate to issue nonresponsiveness rejections.

The undersigned requests that the Director direct his delegates that only in very rare circumstances should there be multiple nonresponsiveness rejections ever issued by the patent office, to prevent the kinds of abuses outlined above.

No fees are believed necessary for this petition.

Respectfully submitted,

Date: \_7/3/2008\_\_\_\_\_

\_\_\_/Scott C Harris/\_\_\_\_\_  
Scott C. Harris  
Reg. No. 32,030

Customer No. 23844  
Scott C. Harris, Esq.  
P.O. Box 927649  
San Diego, CA 92192  
Telephone: (619) 823-7778  
Facsimile: (858) 756-7717

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Appendix 1



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/669,805

09/26/2000

Scott C. Harris

RTA/SCH

3717

23844

7590

01/17/2006

SCOTT C HARRIS

P O BOX 927649

SAN DIEGO, CA 92192

EXAMINER

GARCIA, ERNESTO

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Non-Compliant  
Amendment (37 CFR 1.121)**

Application No.

09/669,805

Examiner

Ernesto Garcia

Applicant(s)

HARRIS, SCOTT C.

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on **19 October 2005** is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☒ 1. Amendments to the specification:
- ☒ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☒ C. Other The amended first paragraph at page 4 is missing the markings.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☒ E. Other: See Continuation Sheet.

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

**TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

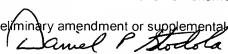
1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted within the time period set forth in the final Office action.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action.

**Extensions of time** are available under 37 CFR 1.136(a) **only** if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

  
DANIEL P. STODOLA

**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3600**



Continuation of 4(e) Other: The status of claims 7, 23, and 24 should be --(Withdrawn)-- as the examiner withdrew these claims.

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Filed : September 26, 2000

Appendix 2



# UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,805	09/26/2000	Scott C. Harris	RTA/SCH	3717
23844	7590	04/19/2006	EXAMINER	
SCOTT C HARRIS				
P O BOX 927649				
SAN DIEGO, CA 92192				
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



## UNITED STATES DEPARTMENT OF COMMERCE

## U.S. Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

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Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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09/669,805

EXAMINER

ART UNIT

PAPER

20060411

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

## Response to Amendment

The reply filed on February 17, 2006 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Applicant has failed to provide replacement drawings or otherwise correct the deficiencies of the drawings that were previously noted. In this regard, applicant should note that current Office practice eliminated the proposed drawing correction process and the holding in abeyance of the actual corrections. Actual corrected drawings are required. Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30-5:30. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E.G.  
April 12, 2006

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

Appl. No. : 09/669,805  
Filed : September 26, 2000

Appendix 3



# UNITED STATES PATENT AND TRADEMARK OFFICE

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[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,805	09/26/2000	Scott C. Harris	RTA/SCH	3717

23844 7590 07/27/2006

SCOTT C HARRIS  
P O BOX 927649  
SAN DIEGO, CA 92192

EXAMINER

GARCIA, ERNESTO

ART UNIT PAPER NUMBER

3679

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# **Notice of Non-Compliant Amendment (37 CFR 1.121)**

Application No.

09/669,805

Examiner

Ernesto Garcia

Applicant(s)

HARRIS, SCOTT C.

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 16 May 2006 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
  - ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 2. Abstract:
  - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☒ 3. Amendments to the drawings:
  - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☒ C. Other See Continuation Sheet.
- ☐ 4. Amendments to the claims:
  - ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☐ E. Other: \_\_\_\_\_.
- ☒ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):  
See Continuation Sheet

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

## **TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

- 1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
- 2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a Quayle action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

*Daniel P. Stodola*

Legal Instruments Examiner (LIE), if applicable

DANIEL P. STODOLA Telephone No.

Continuation of 3(c) Other: Changes to the drawings have not been explained and it is unclear what was changed in all the sheets submitted. 37 CFR 1.121(d) states: All changes to the drawings shall be explained, in detail, in either the drawing amendment or remarks section of the amendment paper.

Continuation of 5 Other: The amendment is not signed accordingly. The amendment is rather initialed and does not conform to 37 CFR 1.4(d)(2) and (i).



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Appendix 4



# UNITED STATES PATENT AND TRADEMARK OFFICE

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09/669,805	09/26/2000	Scott C. Harris	RTA/SCH	3717

23844 7590 10/20/2006

SCOTT C HARRIS  
P O BOX 927649  
SAN DIEGO, CA 92192

EXAMINER

GARCIA, ERNESTO

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 10/20/2006

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## UNITED STATES DEPARTMENT OF COMMERCE

## U.S. Patent and Trademark Office

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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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09/669,805

EXAMINER

ART UNIT

PAPER

20061012

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

## Response to Amendment

The reply filed on August 9, 2006 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): The drawing objections have not been addressed. Applicant indicates that nothing has been changed and that these are corrected drawings; yet, Figure 5 has been marked-up which indicates that this sheet is not a replacement sheet but rather an "annotated sheet". Note copy of Figure 5 with unknown change identified. Applicant must submit corrected drawings. Also, not all the objections to the specification have been addressed. In particular, the change from "the" to --they-- on page 18, line 19. See 37 CFR 1.111. Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-282-7083. The examiner can normally be reached from 9:30-5:30. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E.G.  
October 12, 2006

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

# REPLACEMENT SHEET

What  
is  
this?  
??

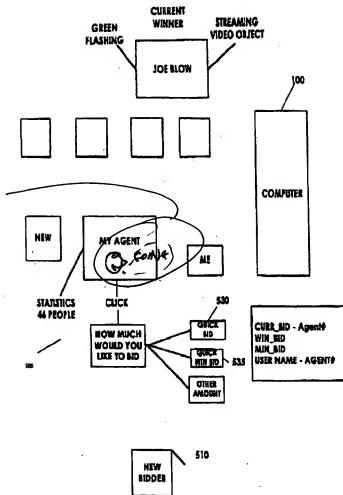


FIGURE 5

Appl. No. : 09/669,805  
Filed : September 26, 2000

Appendix 5



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/669,805

09/26/2000

Scott C. Harris

RTA/SCH

3717

23844

7590

02/08/2007

SCOTT C HARRIS

P O BOX 927649

SAN DIEGO, CA 92192

EXAMINER

GARCIA, ERNESTO

ART UNIT

PAPER NUMBER

3679

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
--	-----------	---------------

30 DAYS

02/08/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Notice of Non-Compliant  
Amendment (37 CFR 1.121)**

Application No.

09/669,805

Examiner

Garcia, Ernesto

Applicant(s)

HARRIS, SCOTT C.

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 20 November 2006 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☒ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☒ C. Other See Continuation Sheet.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☐ E. Other: \_\_\_\_\_.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):  
\_\_\_\_\_

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

**TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Eric Dantzier

Legal Instruments Examiner (LIE), if applicable

571-272-6586

Telephone No.





Continuation of 1(c) Other: Amendments to the specification must be made by adding, deleting or replacing a paragraph, by replacing a section, or by a substitute specification.

Appl. No. : 09/669,805  
Filed : September 26, 2000

Appendix 6



## UNITED STATES PATENT AND TRADEMARK OFFICE

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Address: COMMISSIONER FOR PATENTS  
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Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,805	09/26/2000	Scott C. Harris	RTA/SCH	3717
23844	7590	09/12/2007	EXAMINER	
SCOTT C HARRIS			GARCIA, ERNESTO	
P O BOX 927649			ART UNIT	PAPER NUMBER
SAN DIEGO, CA 92192			3679	
			MAIL DATE	DELIVERY MODE
			09/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 09/669,805	<b>Applicant(s)</b> HARRIS, SCOTT C.
<b>Examiner</b> Ernesto Garcia	<b>Art Unit</b> 3679

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 28 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_ *Daniel P. Stodola*  
13. ☐ Other: \_\_\_\_\_

**DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3800**

**Notice of Non-Compliant  
Amendment (37 CFR 1.121)**

Application No.

09/669,805

Examiner

Ernesto Garcia

Applicant(s)

HARRIS, SCOTT C.

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 28 August 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

**THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:**

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☒ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☒ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☒ C. Other See Continuation Sheet.
- ☐ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☐ E. Other: \_\_\_\_\_.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):  
\_\_\_\_\_

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

**TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a Quayle action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

Continuation of 3(c) Other: Re: item 3B: the amendment fails to include replacement drawings sheets.

Appl. No. : 09/669,805  
Filed : September 26, 2000

Appendix 7

**Notice of Non-Compliant  
Amendment (37 CFR 1.121)**

Application No.

09/669,805

Examiner

Ernesto Garcia

Applicant(s)

HARRIS, SCOTT C.

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 17 September 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☒ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☒ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☒ C. Other See Continuation Sheet.
- ☐ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☐ E. Other: \_\_\_\_\_.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):  
\_\_\_\_\_

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

**TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a Quayle action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action; or  
**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.



Continuation of 3(c) Other: Re: item B: the replacement sheets contain markings showing changes and thus are apparently marked-up sheets instead of actual replacement sheets..

Appl. No. : 09/669,805  
Filed : September 26, 2000

Appendix 8



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,805	09/26/2000	Scott C. Harris	RTA/SCH	3717

23844

7590

03/13/2008

SCOTT C HARRIS

P O BOX 927649

SAN DIEGO, CA 92192

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 03/13/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief</b> <b>(37 CFR 41.37)</b>	<b>Application No.</b> 09/669,805	<b>Applicant(s)</b> HARRIS, SCOTT C.	
	<b>Examiner</b> ERNESTO GARCIA	<b>Art Unit</b> 3679	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 16 December 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Daniel P. Stodola/  
Supervisory Patent Examiner, Art Unit 3679

Continuation of 10. Other (including any explanation in support of the above items):

Re: item 2: The status of claims 1, 3, 4, 6, and 8-12 has not been addressed and thus the status of all claims has not been set forth as is required.

Re: item 3: Appellant's statement that "it is unknown whether the status of these amendments have been entered, or not entered", the commentary disagreeing with the Office's handling of these amendments, and the request that these amendments should be entered after final does not constitute a proper statement of the status of these amendments as understood by appellant. The statement should indicate whether or not the amendments were entered. Absent any communication indicating entry, it would appear that these amendments either were not entered or were not considered and thus not entered.

Re: item 4: The reference to the first computer, the bids, the current bids, and the information by reference character is missing from claims 2 and 13. Further, the concise explanation should be about the claimed invention and not what particular pages and line numbers describe. In the description of claim 13, it describes "and others" when referencing the specification. This description is not identify the page/line location and should be replaced with the specific location or be deleted. Further with respect to claim 13, the entire claim must be mapped out irrespective of whether or not this information was previously identified for another independent claim. The description of claim 18 fails to identify each of the features by reference characters. For example, claim 18 sets forth a "server" and this server is identified in the specification by a reference numeral associated therewith. However, no reference numeral is provided in the summary of this claimed subject matter. In the description of claim 25, it describes "see the variables described in the bottom nine lines of page 15". This is not concise since it is unclear what are the variables being referred to. Accordingly, the description should identify the variables. Further, the description "this is checked in the second computer without contacting the first computer" at the end of page 8 to describe claim 25 is incorrect since nowhere is there a step of checking in claim 25. It should be noted that the only step that occurs without contacting the first computer is informing the user, and not determining the highest bid.

Re: item 7: Only the claims that are being appeal are to be present in the appendix. Accordingly, since claims 7, 23 and 24 are not included in this appeal, a copy of such claims is not to be included in the appendix of appealed claims.

Appl. No. : 09/669,805  
Filed : September 26, 2000

Appendix 9



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

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Alexandria, Virginia 22313-1450

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,805	09/26/2000	Scott C. Harris	RTA/SCH	3717

23844

7590

06/18/2008

SCOTT C HARRIS

P O BOX 927649

SAN DIEGO, CA 92192

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 06/18/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief</b> <b>(37 CFR 41.37)</b>	<b>Application No.</b> 09/669,805	<b>Applicant(s)</b> HARRIS, SCOTT C.	
	<b>Examiner</b> ERNESTO GARCIA	<b>Art Unit</b> 3679	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 11 April 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☒ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Daniel P. Stodola/  
 Supervisory Patent Examiner, Art Unit 3679



Continuation of 10. Other (including any explanation in support of the above items):

Re: item 4: The concise explanation is to be about the claimed invention and not a discussion of what particular pages and line numbers of the specification describe/discuss. Accordingly, appellant has not properly mapped out claim 2. Rather, appellant seems to have provided a summary explanation of the disclosure by discussing what particular pages and line numbers of the specification describe. The Summary of the Claimed Subject Matter is not to include a summary of the disclosed invention. Note that the only instance of the correct approach appears in the first paragraph of this section when mapping claim 2. Further, it is noted that Appellant makes reference to "the system" but such is not present in claim 2 (the claim is drawn to a method). Accordingly, this should be deleted. Further, the explanation of the claimed subject matter of claim 2 mentions "a server" and "the amount necessary to win the current auction until outbid". However, neither of these features have been recited in claim 2 and thus the discussion of these features is inappropriate for the section that is to define and map only the "claimed" subject matter. Further, the concise explanation fails to map out lines 8-13 of claim 2.

With respect to claim 13, the appellant states that "the first computer is described as a remote terminal" at page 7, line 4. However, this is not a feature in claim 13 and should be deleted. As a side note, it appears that the users are remote rather than the first computer. Further, where is the explanation/mapping of the limitation "that are remote from a location of said first computer, to bid on an item" in lines 4-5? This is not found in the concise explanation. The reference to "but does not display the highest bid" at page 7, line 12, is noted. However, such limitation is not found in claim 13 and therefore the discussion thereof as a part of the "claimed" subject matter of claim 13 is improper. Claim 13 states "said first computer displaying a current winning amount, which is an amount that exceeds all the other bids on the item, but which may be less than, or the same as, said highest bid". Further, if the current winning amount is the same as said highest bid as claimed, wouldn't this be contrary to what the appellant is describing as "does not display the highest bid" as currently set forth in the brief? Further, claim 13 fails to concisely explain the subject matter describing the relationship between the bids, in particular the language "depending on ... exceed said highest bid" in lines 11-15.

The reference to "see page 4 lines 1-13" at the bottom of page 7 should be enclosed in parentheses, presented as a separate sentence or separated from "maximum bid" by a comma.

With respect to claim 25, the brief fails to identify the first computer and the "other computer", i.e., the second computer, similarly done as the previous independent claims. The explanation fails to mention the "other computer". Further, the description "the secret maximum bid" is not found in claim 25, rather the claim sets forth "said secret maximum bid amount".

Re: item 5: Appellant lists "Have the drawings been properly corrected" as a "ground of rejection" to be reviewed on appeal. This "issue" is neither a "ground of rejection" nor is it an issue subject to review by the Board of Appeals. Note also that "objections" and entry/non-entry of amendments are not subject to review by the Board. Accordingly, such should not be listed as a ground of rejection in this section. Further, Appellant makes several incomplete references to rejections under Section 112. The complete statutory basis of the ground of rejection is required when stating what the ground of rejection is that is to be reviewed. This also includes identifying the particular paragraph of Section 102. Further still, the statement of the ground of rejection is supposed to be just that, a statement, and not presented in the form of a question.

Re: item 6: Appellant's brief fails to provide separate subheadings for the claims that apparently are being argued separately under the various respective grounds of rejection.

Re: item 9: Appellant indicates that the Related Proceedings Appendix is being "attached". A review of the brief filed on April 11, 2008 reveals that nothing has been attached. It appears appellant inadvertently failed to attach the Related Proceedings appendix.